

108TH CONGRESS
2D SESSION

H. R. 4955

To regulate interstate commerce by prohibiting the sale of children's personally identifiable information for commercial marketing purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2004

Ms. HOOLEY of Oregon introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To regulate interstate commerce by prohibiting the sale of children's personally identifiable information for commercial marketing purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Children’s Listbroker
5 Privacy Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Commercial list brokers routinely advertise
9 and sell detailed information on children, including
10 names, addresses, ages, and other data, for use in

1 marketing. This data is commonly available on chil-
2 dren as young as two years old, enabling marketers
3 to target specific demographics such as junior high
4 school, elementary school, or even preschool.

5 (2) Commercially available marketing databases
6 can be very large, covering millions of children.

7 (3) Commercially available marketing databases
8 can include a variety of information on the children
9 they cover, from ethnicity to family income to hob-
10 bies and interests.

11 (4) Money spent on marketing to children has
12 been estimated at \$12 billion per year.

13 (5) Several Federal statutes, including section
14 1061 of the No Child Left Behind Act, the Chil-
15 dren's Online Privacy Protection Act, and the Fam-
16 ily and Educational Rights and Privacy Act, restrict
17 the collection and disclosure of information about
18 children or students under specified circumstances.
19 When data on children is collected in a manner that
20 is outside the scope of those statutes, however, Fed-
21 eral law does not significantly restrict the commer-
22 cial sale or resale of such data.

23 (6) The ability to sell information about chil-
24 dren to marketers for a profit creates an economic
25 incentive to find new and creative ways to collect

1 and compile such information, and possibly to cir-
2 cumvent or subvert the intent of those federal stat-
3 utes that do govern the collection of information
4 about children or students. There are a variety of
5 means and sources that marketers and list brokers
6 can and do use to compile names, addresses, and
7 other data about children.

8 **SEC. 3. RESTRICTION ON SALE OR PURCHASE OF CHIL-**
9 **DREN'S PERSONAL INFORMATION.**

10 (a) IN GENERAL.—It is unlawful—

11 (1) to sell personal information about an indi-
12 vidual the seller knows to be a child;

13 (2) to purchase personal information about an
14 individual identified by the seller as a child, for the
15 purpose of marketing to that child; or

16 (3) for a person who has provided a certifi-
17 cation pursuant to subsection (b)(2), in connection
18 with the purchase of personal information about an
19 individual identified by the seller as a child, to en-
20 gage in any practice that violates the terms of the
21 certification.

22 (b) EXCEPTIONS.—

23 (1) PARENTAL CONSENT.—Subsection (a) shall
24 not apply to any sale, purchase, or use of personal
25 information about a child if the parent of the child

1 has granted express consent to that sale, purchase,
2 or use of the information.

3 (2) CERTIFICATION.—Subsection (a)(1) shall
4 not apply to the sale of personal information about
5 a child if the purchaser certifies to the seller, elec-
6 tronically or in writing, before the sale is com-
7 pleted—

8 (A) the purpose for which the information
9 will be used by the purchaser; and

10 (B) that the purchaser will neither—

11 (i) use the information for marketing
12 that child; nor

13 (ii) permit the information to be used
14 by others for the purpose of marketing to
15 that child.

16 **SEC. 4. ADMINISTRATION AND ENFORCEMENT.**

17 (a) IN GENERAL.—Except as provided in subsection
18 (b), this Act shall be enforced by the Federal Trade Com-
19 mission as if the violation of section 3 of this Act were
20 an unfair or deceptive act or practice proscribed under sec-
21 tion 18(a)(1)(B) of the Federal Trade Commission Act
22 (15 U.S.C. 57a(a)(1)(B)).

23 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-
24 CIES.—Compliance with this Act shall be enforced
25 under—

1 (1) section 8 of the Federal Deposit Insurance
2 Act (12 U.S.C. 1818), in the case of—

3 (A) national banks, and Federal branches
4 and Federal agencies of foreign banks, by the
5 Office of the Comptroller of the Currency;

6 (B) member banks of the Federal Reserve
7 System (other than national banks), branches
8 and agencies of foreign banks (other than Fed-
9 eral branches, Federal agencies, and insured
10 State branches of foreign banks), commercial
11 lending companies owned or controlled by for-
12 eign banks, and organizations operating under
13 section 25 or 25A of the Federal Reserve Act
14 (12 U.S.C. 601 and 611), by the Board; and

15 (C) banks insured by the Federal Deposit
16 Insurance Corporation (other than members of
17 the Federal Reserve System) and insured State
18 branches of foreign banks, by the Board of Di-
19 rectors of the Federal Deposit Insurance Cor-
20 poration;

21 (2) section 8 of the Federal Deposit Insurance
22 Act (12 U.S.C. 1818), by the Director of the Office
23 of Thrift Supervision, in the case of a savings asso-
24 ciation the deposits of which are insured by the Fed-
25 eral Deposit Insurance Corporation;

1 (3) the Federal Credit Union Act (12 U.S.C.
2 1751 et seq.) by the National Credit Union Adminis-
3 tration Board with respect to any Federal credit
4 union;

5 (4) part A of subtitle VII of title 49, United
6 States Code, by the Secretary of Transportation
7 with respect to any air carrier or foreign air carrier
8 subject to that part;

9 (5) the Packers and Stockyards Act, 1921 (7
10 U.S.C. 181 et seq.) (except as provided in section
11 406 of that Act (7 U.S.C. 226, 227)), by the Sec-
12 retary of Agriculture with respect to any activities
13 subject to that Act; and

14 (6) the Farm Credit Act of 1971 (12 U.S.C.
15 2001 et seq.) by the Farm Credit Administration
16 with respect to any Federal land bank, Federal land
17 bank association, Federal intermediate credit bank,
18 or production credit association.

19 (c) EXERCISE OF CERTAIN POWERS.—For the pur-
20 pose of the exercise by any agency referred to in sub-
21 section (b) of its powers under any Act referred to in that
22 subsection, a violation of section 3 of this Act is deemed
23 to be a violation of a requirement imposed under that Act.
24 In addition to its powers under any provision of law spe-
25 cifically referred to in subsection (b), each of the agencies

1 referred to in that subsection may exercise, for the pur-
2 pose of enforcing compliance with any requirement im-
3 posed under section 3 of this Act, any other authority con-
4 ferred on it by law.

5 (d) ACTIONS BY THE COMMISSION.—The Commis-
6 sion shall prevent any person from violating section 3 of
7 this Act in the same manner, by the same means, and
8 with the same jurisdiction, powers, and duties as though
9 all applicable terms and provisions of the Federal Trade
10 Commission Act (15 U.S.C. 41 et seq.) were incorporated
11 into and made a part of this Act. Any entity that violates
12 any provision of that section is subject to the penalties
13 and entitled to the privileges and immunities provided in
14 the Federal Trade Commission Act in the same manner,
15 by the same means, and with the same jurisdiction, power,
16 and duties as though all applicable terms and provisions
17 of the Federal Trade Commission Act were incorporated
18 into and made a part of that section.

19 (e) PRESERVATION OF COMMISSION AUTHORITY.—
20 Nothing contained in this section shall be construed to
21 limit the authority of the Commission under any other
22 provision of law.

23 **SEC. 5. ACTIONS BY STATES.**

24 (a) IN GENERAL.—

1 (1) CIVIL ACTIONS.—In any case in which the
2 attorney general of a State has reason to believe
3 that an interest of the residents of that State has
4 been or is threatened or adversely affected by the
5 engagement of any person in a practice that section
6 3 of this Act, the State, as *parens patriae*, may
7 bring a civil action on behalf of the residents of the
8 State in a district court of the United States of ap-
9 propriate jurisdiction—

10 (A) to enjoin that practice;

11 (B) to enforce compliance with the rule;

12 (C) to obtain damage, restitution, or other
13 compensation on behalf of residents of the
14 State; or

15 (D) to obtain such other relief as the court
16 may consider to be appropriate.

17 (2) NOTICE.—

18 (A) IN GENERAL.—Before filing an action
19 under paragraph (1), the attorney general of
20 the State involved shall provide to the Commis-
21 sion—

22 (i) written notice of that action; and

23 (ii) a copy of the complaint for that
24 action.

25 (B) EXEMPTION.—

1 (i) IN GENERAL.—Subparagraph (A)
2 shall not apply with respect to the filing of
3 an action by an attorney general of a State
4 under this subsection, if the attorney gen-
5 eral determines that it is not feasible to
6 provide the notice described in that sub-
7 paragraph before the filing of the action.

8 (ii) NOTIFICATION.—In an action de-
9 scribed in clause (i), the attorney general
10 of a State shall provide notice and a copy
11 of the complaint to the Commission at the
12 same time as the attorney general files the
13 action.

14 (b) INTERVENTION.—

15 (1) IN GENERAL.—On receiving notice under
16 subsection (a)(2), the Commission shall have the
17 right to intervene in the action that is the subject
18 of the notice.

19 (2) EFFECT OF INTERVENTION.—If the Com-
20 mission intervenes in an action under subsection (a),
21 it shall have the right—

22 (A) to be heard with respect to any matter
23 that arises in that action; and

24 (B) to file a petition for appeal.

1 (c) CONSTRUCTION.—For purposes of bringing any
2 civil action under subsection (a), nothing in this subtitle
3 shall be construed to prevent an attorney general of a
4 State from exercising the powers conferred on the attorney
5 general by the laws of that State to—

6 (1) conduct investigations;

7 (2) administer oaths or affirmations; or

8 (3) compel the attendance of witnesses or the
9 production of documentary and other evidence.

10 (d) ACTIONS BY THE COMMISSION.—In any case in
11 which an action is instituted by or on behalf of the Com-
12 mission for violation of section 2 of this Act, no State may,
13 during the pendency of that action, institute an action
14 under subsection (a) against any defendant named in the
15 complaint in that action for violation of that section.

16 (e) VENUE; SERVICE OF PROCESS.—

17 (1) VENUE.—Any action brought under sub-
18 section (a) may be brought in the district court of
19 the United States that meets applicable require-
20 ments relating to venue under section 1391 of title
21 28, United States Code.

22 (2) SERVICE OF PROCESS.—In an action
23 brought under subsection (a), process may be served
24 in any district in which the defendant—

25 (A) is an inhabitant; or

1 (B) may be found.

2 **SEC. 6. DEFINITIONS.**

3 In this Act:

4 (1) CHILD.—The term “child” means an indi-
5 vidual under the age of 16.

6 (2) COMMISSION.—The term “Commission”
7 means the Federal Trade Commission.

8 (3) EXPRESS CONSENT.—

9 (A) IN GENERAL.—The term “express con-
10 sent” means an affirmative indication of per-
11 mission in writing or electronic form. The term
12 “express consent” does not include consent in-
13 ferred from a failure to indicate affirmatively
14 that consent is denied or withheld.

15 (B) PREREQUISITES.—Express consent is
16 not valid unless—

17 (i) before granting the consent the in-
18 dividual granting the consent was informed
19 of the purpose for which the information
20 would be sold, purchased, or used; and

21 (ii) consent was not granted as a con-
22 dition for making a product, service, or
23 warranty available to the individual or the
24 child to which the information pertains.

1 (4) MARKETING.—The term “marketing”
2 means making a communication to encourage the
3 purchase or use of a commercial product or service.
4 For purposes of this paragraph, a product or service
5 shall be considered to be commercial if some or all
6 of the proceeds from the sale inure to the benefit of
7 an enterprise conducted for profit.

8 (5) PARENT.—The term “parent” includes a
9 legal guardian.

10 (6) PERSONAL INFORMATION.—The term “per-
11 sonal information” means identifiable information
12 about an individual, including—

13 (A) a name;

14 (B) a home or other physical address in-
15 cluding street name and name of a city or town;

16 (C) an e-mail address or online username;

17 (D) a telephone number;

18 (E) a Social Security number; or

19 (F) any other information that permits a
20 specific individual to be identified.

21 (7) PURCHASE; SELL; SALE.—In section 3, the
22 terms “purchase”, “sell”, and “sale” include the
23 purchase and sale of the right to use personal infor-
24 mation, without regard to whether—

25 (A) the right is limited or unlimited;

1 (B) the transaction is characterized as a
2 purchase, sale, lease, or otherwise; and

3 (C) the consideration for the transaction is
4 monetary, goods, or services.

5 **SEC. 7. EFFECTIVE DATE.**

6 This Act shall take effect 6 months after the date
7 of enactment.

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